

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

DELPHINE FAWUNDU BUFORD,

Plaintiff,

V.

NEWS CORPORATION, FOX NEWS NETWORK,)
LLC and DOW JONES & COMPANY, Inc.)

Defendant.

No. 11-CV-5076 (RJH) (JCF)

**ANSWER OF FOX NEWS
NETWORK, LLC**

Defendant Fox News Network, LLC ("Fox News"), by and through its attorneys Patterson Belknap Webb & Tyler LLP, answers plaintiff Delphine Fawundu Buford's Complaint as follows. Former defendants News Corporation ("News Corp.") and Dow Jones & Company, Inc. ("Dow Jones"), have been dismissed from this case and therefore no answer by them is required.

THE PARTIES

1. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint.
2. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint.
3. No response is required to the allegations of paragraph 3 of the Complaint, which concern former defendant News Corp.
4. Fox News admits the allegations in paragraph 4 of the Complaint.

5. No response is required to the allegations of paragraph 5 of the Complaint, which concern former defendant Dow Jones.

JURISDICTION AND VENUE

6. Fox News admits that this action purports to be a civil action for copyright infringement.

7. Fox News admits that this Court has jurisdiction over this case under 28 U.S.C. § 1338.

8. Fox News admits that venue is proper in the Southern District of New York under 28 U.S.C. § 1400.

FACTS COMMON TO ALL CLAIMS

9. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint.

10. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint.

11. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint.

12. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint.

13. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint.

14. Fox News admits that Joanne Chesimard, a/k/a Assata Shakur, was convicted of first degree murder of a New Jersey State trooper, Warner Foerster. As indicated on the FBI website from which Fox News obtained the image of Chesimard that underlies this action, in addition to first degree murder, Chesimard was convicted of assault and battery of a

police officer, assault with a dangerous weapon, assault with intent to kill, illegal possession of a weapon, and armed robbery. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 of the Complaint.

15. Fox News admits that the Federal Bureau of Investigation is currently offering a reward of One Million Dollars (\$1,000,000) for information leading to the apprehension of Chesimard. The FBI website, <http://www.fbi.gov/wanted/dt/joanne-deborah-chesimard>, has three photographs of Chesimard to aid the public in identifying the fugitive, including the photograph that is the subject of this action. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 of the Complaint.

16. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint.

17. Fox News admits that a purported copyright registration bearing the registration number VA0001777168 was attached to the Complaint. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 of the Complaint.

18. No response is required to the allegations of paragraph 18 of the Complaint, which concerns former defendant News Corp.

19. Fox News admits that News Corp. is the parent company of Fox News and Dow Jones. Fox News denies the remaining allegations in paragraph 19 of the Complaint.

20. Fox News admits that it is a distributor and telecaster of news and business information worldwide. Fox News further admits that, among other entities, it is composed of cable channels including the Fox News Channel and Fox Business Network, the

websites foxnews.com, foxbusiness.com and <http://nation.foxnews.com>, Fox News Mobile, and Fox News Radio. Fox News denies the remaining allegations in paragraph 20 of the Complaint.

21. Fox News admits the allegations in paragraph 21 of the Complaint.

22. Fox News admits that millions of viewers watch Fox News on a regular or occasional basis.

23. Fox News admits that it has been reported that programming on the Fox News Channel often has viewer ratings that exceed CNN and MSNBC combined.

24. Fox News admits that it makes available and distributes some portions of its programming to stations affiliated with Fox News. Fox News denies the remaining allegations in the complaint.

25. No response is required to the allegations of paragraph 25 of the Complaint, which concern former defendant Dow Jones.

26. No response is required to the allegations of paragraph 26 of the Complaint, which concern former defendant Dow Jones.

27. No response is required to the allegations of paragraph 27 of the Complaint, which concern former defendant Dow Jones.

28. No response is required to the allegations of paragraph 28 of the Complaint, which concern former defendant Dow Jones.

29. Fox News admits that Bill O'Reilly is the host of The O'Reilly Factor and that The O'Reilly Factor is the most-watched cable news television show in the United States. Fox News further admits that The O'Reilly Factor consistently delivers ratings, at its regular time slot of 8:00 p.m., in excess of the ratings of CNN, MSNBC and Headline News Network combined.

30. Fox News admits that a single episode of The O'Reilly Factor is currently shown in media markets, including New York, three times over the course of two days. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 30 of the Complaint

31. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint.

32. Fox News admits that Stewart and O'Reilly have appeared on each other's television programs, and denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 32 of the Complaint.

33. Fox News admits that Stewart appeared on The O'Reilly Factor on May 16, 2011. Fox News further admits that, during the May 16, 2011 telecast of The O'Reilly Factor, an image of Chesimard with the caption "Joanne Chesimard aka Assata Shakur, Killed NJ Trooper in 1973" with the Fox News Channel logo in the bottom left hand corner of the screen was displayed for a few seconds during the hour-long telecast. Fox News further admits that purported screen shots of the telecast were attached to the Complaint. Fox News denies the remaining allegations in paragraph 33 of the Complaint.

34. Fox News admits that the May 16, 2011 episode of The O'Reilly Factor was aired over two or more days. Fox News denies the remaining allegations in paragraph 34 of the Complaint.

35. Fox News admits the allegations in paragraph 35 of the Complaint.

36. Fox News admits that a video, with the caption "O'Reilly vs. Stewart Over Common Controversy, Part 1" was posted on the Fox News website at the address <http://video.foxnews.com/v/4697119/oreilly-vs-stewart-over-common-controversy-part-1/> on or

about May 17, 2011. Fox News further admits that purported screen shots from the video are attached as Exhibit C to the Complaint.

37. Fox News admits that an image of Chesimard with the caption "Joanne Chesimard aka Assata Shakur, Killed NJ Trooper in 1973" with the Fox News Channel logo in the bottom left hand corner of the screen was displayed for a few seconds in the video of The O'Reilly Factor posted on the Fox News website. Fox News denies the remaining allegations in paragraph 37 of the Complaint.

38. Fox News admits that such video was telecast on the Fox News Channel during an episode of the program "The O'Reilly Factor."

39. Fox News admits that the May 16, 2011 episode of The O'Reilly Factor was made available on the Fox News website. Fox News denies the remaining allegations in paragraph 39 of the Complaint.

40. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Complaint.

41. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Complaint.

42. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Complaint.

43. Fox News admits that a purported letter to Fox News is attached as Exhibit D to the complaint. Fox News further admits that the letter attached to the Complaint alleges, among other things: that Fox News is in violation of plaintiff's copyright through the use of the image of Chesimard; that such use commenced on or about May 17, 2011; and that Fox News should provide any information that might demonstrate that the usage of plaintiff's image

was authorized or that plaintiff's claim is without merit. Fox News denies the remaining allegations in paragraph 43 of the Complaint.

44. Fox News admits that it did not respond to the plaintiff's counsel's letter as of the date of the Complaint and as of July 18, 2011.

45. Fox News states that the allegations of Paragraph 45 of the Complaint are so vague and uncertain that no responsive pleading is required.

46. Fox News denies the allegations contained in paragraph 46 of the Complaint.

47. Fox News admits that it is a sophisticated licensee and licensor of intellectual property and employs persons expert in aspects of licensing, rights management and related matters. Fox News further admits that it has legal counsel available to its employees to ensure compliance with all appropriate business protocols and federal and state statutes including USC Title 17. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47 of the Complaint.

48. Fox News admits that it is generally familiar with procedures for licensing of intellectual property, denies that any license was required for the alleged uses complained of herein, and otherwise denies the allegations contained in paragraph 48 of the Complaint.

49. Fox News admits that Fox News did not contact plaintiff to seek her consent, authorization or license for the use of the subject image prior to June 24, 2011, the date of the purported letter to Fox News. Fox News denies that any such consent, authorization or license was necessary.

50. Fox News denies the allegations in paragraph 50 of the Complaint.

51. Fox News denies the allegations in paragraph 51 of the Complaint.

52. Fox News denies the allegations in paragraph 52 of the Complaint.

53. Fox News denies having knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff's alleged image of Chesimard has been openly and notoriously credited to Delphine Fawundu, and affirmatively states that the FBI Website from which Fox obtained the image in question does not credit the plaintiff or otherwise disclose her alleged authorship of the image. Fox News admits that Fox News did not contact plaintiff to seek her consent, authorization or license for the use of the subject image, but Fox News denies that any such consent, authorization or license was necessary. Fox News denies the remaining allegations in paragraph 53 of the Complaint.

54. Fox News denies the allegations in paragraph 54 of the Complaint.

55. Fox News denies the allegations in paragraph 55 of the Complaint.

56. Fox News admits that the parties have been unable to resolve their dispute, but denies that plaintiff has made good faith attempts to do so.

57. Fox News denies the allegations in paragraph 57 of the Complaint.

58. Fox News admits that plaintiff has purported to incorporate the facts contained in paragraphs 1 through 56 of her Complaint to each of her claims for relief.

FIRST CLAIM FOR RELIEF

59. Fox News denies the allegations in paragraph 59 of the Complaint.

60. Fox News denies the allegations in paragraph 60 of the Complaint.

61. Fox News denies the allegations in paragraph 61 of the Complaint.

62. Fox News denies the allegations in paragraph 62 of the Complaint.

63. Fox News denies the allegations in paragraph 63 of the Complaint.

64. Fox News denies the allegations in paragraph 64 of the Complaint.

65. Fox News denies the allegations in paragraph 65 of the Complaint.

SECOND CLAIM FOR RELIEF

66. Fox News denies the allegations in paragraph 66 of the Complaint

67. Fox News denies the allegations in paragraph 67 of the Complaint.

68. Fox News denies the allegations in paragraph 68 of the Complaint.

69. Fox News denies the allegations in paragraph 69 of the Complaint.

70. Fox News denies the allegations in paragraph 70 of the Complaint.

71. Fox News denies the allegations in paragraph 71 of the Complaint.

72. Fox News denies the allegations in paragraph 72 of the Complaint. The alleged infringing act commenced after the first publication of plaintiff's work and before the effective date of registration, and the purported copyright registration was not within three months after the first publication of the work. Under 17 U.S.C. § 412 statutory damages and attorneys' fees are not recoverable.

JURY DEMAND

73. Fox News admits that Buford purports to request a jury trial, and Fox News also respectfully requests a jury trial on all issues and claims so triable.

AFFIRMATIVE DEFENSES TO THE COMPLAINT

Fair Use

74. Plaintiff's claims are barred in whole or in part by the doctrine of fair use.

Estoppel and Acquiescence

75. Plaintiff is estopped from asserting any claims for copyright infringement and she has acquiesced to Fox News's use of the image. The alleged copyrighted image was widely published on the FBI's website and was obtained by Fox News from that source. Due to

this widespread use of the image plaintiff has acquiesced to its use by others and is estopped from asserting claims for copyright infringement against Fox News.

Incidental Use

76. Any fleeting use by Fox News of plaintiff's image was an incidental, and *de minimis*, non-infringing use.

Protected Use Under the First Amendment

77. The relief sought by plaintiff would result in a violation of Fox News's right of free speech and free press under the First Amendment of the Constitution of the United States, as well as similar provisions in the constitutions of New York and other states.

No Statutory Damages or Attorney's Fees

78. Under 17 U.S.C. § 412, plaintiff is not entitled to statutory damages, and is not entitled to attorneys' fees. The alleged infringing act commenced after the first publication of plaintiff's work and before the effective date of registration, and the purported copyright registration was not within three months after the first publication of the work. Statutory damages and attorneys' fees therefore are not recoverable.

Reservation of Other Affirmative Defenses

79. Fox News reserves the right to assert additional affirmative defenses as evidence of those defenses becomes available during discovery.

PRAYER FOR RELIEF

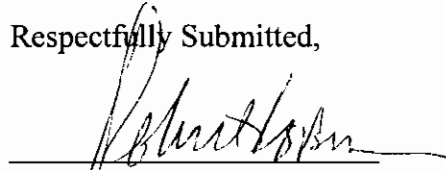
WHEREFORE, Fox News prays that judgment be entered dismissing plaintiff's claims, and that Fox News be granted:

- A. Its costs and attorneys fees pursuant to 17 U.S.C. § 505; and
- B. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Fox News hereby demands a trial by jury for all the issues so triable in this action.

Respectfully Submitted,



Dated: September 16, 2011

Robert P. LoBue, Esq.

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